FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.755 OF 2004

Office Notes, office Memorandum of Coram, appearances of, Court's orders or directions and Registrar's orders :	Court's order Judge's orders

Mr.S.S. Patwardhan for appellant.

Mr.D.H.Mehta i/b. M/s.Ashwinikumar & Co. for respondent Nos1 to 3.

CORAM: V.C. DAGA, J.

DATED: 10TH SEPTEMBER, 2004.

. Heard this appeal finally by the consent of the parties. This appeal is directed against the order dated 12th July, 2004 whereby the application for temporary injunction under Order 39 Rule 1 & 2 of the C.P.C. has been allowed by the trial Court and thereby defendant Nos.1, 1-a and 1-b are restrained temporarily from manufacturing, marketing, selling or otherwise infringing in whole or in part the registered patent of the plaintiff under No.189095.

2. Having heard the rival parties and having examined the impugned order, it is not difficult to conclude that the trial Court has not considered the prima facie case or the balance of convenience while granting the order of temporary injunction. Consideration of the trial Court is only to be found in paragraph 12 of the order which reads as under :-

> "Considering the defence taken by the defendant and the arguments advanced in their behalf, I am of the opinion that, the defendants are manufacturing in F.R.P. flume. But their contentions is that those are not as per the specification of the patented product of the plaintiff. If this is the case then that they will not suffer any irreparable loss or inconvenience if the defendants are restrained from manufacturing and selling etc. the products as per the specifications for which the plaintiffs has obtained the patent. I find that the plaintiff has prima facie proved his case for the temporary injunction. If the temporary injunction restraining the defendants from manufacturing the product as per the specification in the patent obtained by the plaintiff is not granted, the plaintiff will suffer irreparable loss and the inconvenience will also cause to him. I record my finding against point Nos.1 to 3 accordingly and proceed to pass the following order.

ORDER

Application Exh.5 for the temporary injunction is allowed.

Defendants Nos.1, 1-a, and 1-b are hereby restrained temporary from manufacturing, marketing, selling or otherwise infringing in whole or in part the registered patent of the plaintiff No.189095.

Cost will be costs in the cause."

(Emphasis supplied)

3. Perusal of the aforesaid quoted paragraph in general and underlined portion in particular show that the trial Court has adopted a very convenient way to grant injunction by using the submission made by the defendant and agreeing with the same to say that, if the product of the defendant is not as per the specification of the patented products of the plaintiff, then the plaintiff will not suffer any irreparable loss and conveniently found a escape route for grant of interim injunction.

4. It was expected on the part of the trial Court to consider whether prima facie case exists in favour of the plaintiff and in whose favour the balance of

convenience lies. How the plaintiff would suffer irreparable loss if no injunction is granted. At the same time if it is granted, how to protect interest of the defendant in the event suit fails. None of these aspects which are of paramount consideration before grant of order under order 39 Rule 1 & 2 of the C.P.C. are considered by the trial Court.

5. In the above view of the matter, for the reasons recorded, the impugned order is set aside. The appeal is allowed. All rival contentions are kept open. Exhibit 5 is restored to the file. Same is remanded back to the trial Court for consideration afresh. The trial Court is directed to pass a reasoned order after hearing the parties, as expeditiously as possible, at any rate, within 6 weeks from the date of the communication of this order.

. Parties to act on ordinary copy of the order duly authenticated by the Associate/C.S.

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